IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1041 OF 2005
IN
CRIMINAL WRIT PETITION NO.1505 OF 2005

Mrs.Kalpana A. Sahu ...Applicant
vs.
Bhalchandra V.Datey & Ors. ...Respondents

Mr.D.A.Nalavade for the applicant
Mr.N.V.Gangal for Respondent No.1
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 27,2005

P.C.:

1. Heard Shri Nalawade for the Applicant and Shri Gangal for the Respondent Nos.1 to 8. On 11th August 2005, this application was fully heard. In paragraph No.3 of the said order passed on 11th August 2005 I have observed thus :

"3. After considering the submissions of the learned Counsel appearing for the parties and after perusing the affidavits which are filed on record in this Civil Application, I am prima facie satisfied that the respondent Nos.1 to 8 have not complied with the assurances given to this Court which are recorded in the order dated 8th December 2003. In fact, even if the submissions made by the learned Counsel for the Respondent Nos.1 to 8 are accepted as it is, it is crystal clear that there is non compliance with the

assurances given to this Court. it is pertinent to note that order dated 8th December 2003 passed by this Court clearly states that the Rule was issued and interim relief was granted only on the basis of assurances which are recorded in paragraph 1 of the said order.

2. Thereafter, the application was adjourned from time to time as the parties tried to put an end of the matter. As settlement was not possible, by order dated 6th September 2005, an Officer of this Court was appointed as Court Commissioner to ascertain whether there is a compliance of order dated 8th December 2003. Today a report has been submitted by Shri D.V.Naik, Deputy Registrar of this Court who was appointed as the Commissioner. The conclusions which are summarised in the report are as under :

(a) All the plots in question are having barbed wire fencing;

(b) There is motorable road to all these plots, except to that of the Applicant.

(c) There is no water connection to these plots; and

(d) Individual electricity connection is not provided,

though electric poles are there along the road.

3. So far as Clause (b) of the report is concerned, parties have not disputed the correctness of the conclusion recorded therein drawn by the Court Commissioner. Thus, it is obvious that the assurance which was given to this Court on the basis of which the order dated 8th December 2003 was passed has not been complied with by the Respondent Nos.1 to 8. Therefore, interim relief granted in terms of prayer clause (e) by order dated 8th December 2003 deserves to be vacated.

. Hence I pass the following order :

i) Application is allowed in terms of prayer clause (i).
ii) It is clarified that if the Respondent Nos.1 to 8 comply with the conditions imposed in the order dated 8th December 2003 regarding preparation of motorable road for approaching the plot of the Applicant in this application within a reasonable time, it will be open for the Respondent Nos.1 to 8 to apply for interim interim relief afresh.
iii) The Applicant and the Respondent Nos.1 to 8 will deposit a further amount of Rs.1,500/- each within a period of four weeks from today. The said amount and the amount of Rs.2000/- which is already deposited is permitted to be withdrawn by way of remuneration of the Court Commissioner.

iv) Application is disposed of in above terms.

JUDGE